

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

MARCUS DOMINIC BROOKS,

Petitioner,

v.

**Civil Action No. 3:07CV170
Criminal Action No. 3:04CR40-2
(Judge Maxwell)**

UNITED STATES OF AMERICA,

Respondent.

ORDER

It will be recalled that on January 5, 2009, Magistrate Judge James Seibert filed his Report and Recommendation That §2255 Motion Be Denied, wherein the Petitioner was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed. Accordingly, the Court will review the Magistrate's Report and Recommendation for clear error.¹

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his Motion to Vacate, which was filed pursuant to 28 U.S.C. §2255, wherein Petitioner alleges ineffective assistance of counsel, as well as the response by Respondent, were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation. Moreover, the Court,

¹The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

upon a review for clear error, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted in whole and that this action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's §2255 Motion be, and the same hereby is, **DENIED**. It is further

ORDERED that the above styled action be, and the same hereby is, **DISMISSED** with prejudice and **STRICKEN** from the docket of this Court. It is further

ORDERED that, if Petitioner should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: October 28, 2009

/s/ Robert E. Maxwell
United States District Judge